

EXHIBIT 110

VA Dept of Medical Assistance Services (Hayashi)

December 4, 2008

Richmond, VA

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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

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IN RE: PHARMACEUTICAL INDUSTRY) MDL No. 1456
AVERAGE WHOLESALE PRICE) Civil Action No.
LITIGATION) 01-12257-PBS

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THIS DOCUMENT RELATES TO:) Hon. Patti B.

United States of America ex rel.) Saris
Ven-A-Care of the Florida Keys,)
Inc. v. Abbott Laboratories, Inc.)
Civil Action No. 06-11337-PBS;)
United States of America ex rel.)
Ven-A-Care of the Florida Keys,)
Inc. v. Dey, Inc., et al., Civil) DEPOSITION OF
Action No. 05-11084-PBS; and) VA DEPT. OF
United States of America ex rel.) MEDICAL ASSISTANCE
Ven-A-Care of the Florida Keys,) SERVICES by KEITH
Inc. v. Boehringer Ingelheim) T. HAYASHI
Corp., et al., Civil Action No.)
07-10248-PBS) DECEMBER 4, 2008

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1 Videotaped deposition of THE STATE OF 2 VIRGINIA DEPARTMENT OF MEDICAL ASSISTANCE 3 SERVICES by KEITH T. HAYASHI 4 5 Richmond, Virginia 6 Thursday, December 4, 2008 7 9:00 a.m. 8 9 Videotaped deposition of THE STATE OF VIRGINIA 10 DEPARTMENT OF MEDICAL ASSISTANCE SERVICES by KEITH 11 T. HAYASHI, held at the law offices of United States 12 Attorney's Office, Main Street Centre, 600 East Main 13 Street, Suite 1800, Richmond, Virginia 23219, the 14 proceedings being recorded stenographically by 15 Jonathan Wonnell, a Registered Professional Court 16 Reporter and Notary Public of the Commonwealth of 17 Virginia (Reg. #7142970), and transcribed under 18 his direction. 19 20 21 22	1 A P P E A R A N C E S (CONTINUED) 2 3 On behalf of Abbott Laboratories, Inc.: 4 5 DAVID TORBORG, ESQ. 6 Jones Day 7 51 Louisiana Avenue, N.W. 8 Washington, D.C. 20001-2113 9 (202) 879-3939 10 dstorborg@jonesday.com 11 12 On behalf of Dey, Inc., Dey, L.P. and Mylan: 13 14 MARISA A. LORENZO, ESQ. 15 Kelley, Drye & Warren LLP 16 101 Park Avenue 17 New York, New York 10178 18 (212) 808-7697 19 mlorenzo@kelleydrye.com 20 21 22 ALSO PRESENT: RICK SANBORN, videographer
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1 APPEARANCES OF COUNSEL 2 3 On behalf of the United States of America: 4 LAURIE A. OBEREMBT, ESQ. 5 U.S. Department of Justice 6 Civil Division 7 P.O. Box 261, Ben Franklin Station 8 Washington, D.C. 20044 9 (202) 305-1088 10 laurie.oberembt@usdoj.gov 11 12 On behalf of the Virginia Department of Medical 13 Assistance Services: 14 USHA KODURU, ESQ. 15 JENNIFER L. GOBBLE, ESQ. 16 Commonwealth of Virginia 17 Office of the Attorney General 18 900 East Main Street 19 Richmond, Virginia 23219 20 (704) 786-4074 21 ukoduru@oag.state.va.us 22	1 C O N T E N T S 2 3 WITNESS: KEITH T. HAYASHI PAGE 4 Examination By Ms. Oberembt..... 012 5 Examination By Mr. Torborg..... 046 6 Examination By Ms. Lorenzo..... 262 7 Examination By Ms. Oberembt..... 302 8 Examination By Mr. Torborg..... 306 9 10 D O J E X H I B I T S 11 NUMBER DESCRIPTION PAGE 12 Exhibit DOJ Hayashi 001 - Notice of Continued 13 Deposition of the 14 State of VA Dept. of 15 Medical Assistance 16 Services..... 015 17 Exhibit DOJ Hayashi 002 - DMAS Report entitled 18 "Maximum Allowable Cost 19 Program Reimbursement 20 Methodology for 21 Generic Drugs" dated 22 1/1/05..... 035

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1 MS. OBEREMBT: HHD 014-0449. 2 BY MR. TORBORG: 3 Q. If you could go to that page. 4 A. Does it start with "introduction"? 5 Q. Yes. 6 A. "At HCFA's request?" 7 Q. Mm-hmm. 8 A. Okay. 9 Q. The last paragraph states -- it refers 10 to a Barron's article entitled "Hooked On Drugs." 11 Do you see that? 12 A. I do see that. 13 Q. Do you know if anyone at DMAS reviewed 14 a copy of that at or around the time it was 15 published? 16 A. The "Hooked On Drugs"? 17 Q. Yes. 18 A. I do not know that. 19 Q. Did you ask Mr. Shepherd, Mr. Cohen or 20 Ms. Rollins whether they reviewed that report? 21 A. No, I did not. 22 Q. It fair to say, though, that if DMAS	1 this doesn't refresh your recollection of whether 2 or not you asked Mr. Shepherd or any other 3 employees whether they -- former employees -- 4 whether they reviewed this document? 5 A. No, I did not ask that. 6 Q. Go to the Bates page that ends -- the 7 bottom one R-2, that ends with 55? 8 A. Mm-hmm. 9 Q. The last sentence of the first column 10 on that page states "This sampling showed that 11 for single-source drugs still enjoying patent 12 protection, such as Bristol-Myers Squibb's Taxol 13 or Platinol, true average prices are generally 10 14 to 20 percent below published AWPs." 15 MS. OBEREMBT: Objection. That's not 16 what it says. 17 MR. TORBORG: What did I say? 18 MS. OBEREMBT: You said true average 19 prices instead of true wholesale prices. 20 MR. TORBORG: True wholesale prices. 21 BY MR. TORBORG: 22 Q. Let me start over. "This sampling
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1 received a copy of this report, as the language I 2 indicated earlier suggests that it does, they 3 were made aware of this Barron's article? 4 MS. OBEREMBT: Objection. 5 A. I cannot say that. I don't know if 6 they got this report. 7 Q. You would agree with me that HCFA 8 indicated that they intended to share the report 9 with DMAS, right? 10 MS. OBEREMBT: Objection. 11 A. That was their intention. 12 MR. TORBORG: I'd like to mark as our 13 next exhibit, Abbott Hayashi 14 -- 14 (Exhibit Abbott Hayashi 014 was 15 marked for identification.) 16 BY MR. TORBORG: 17 Q. Mr. Hayashi, this is a copy of the 18 Barron's "Hooked On Drugs" article that was 19 referenced in the previous document I showed you. 20 Do you see that? 21 A. Yes, I do. 22 Q. And having a chance to look at this,	1 showed that for single-source drugs still 2 enjoying patent protection, such as Bristol-Myers 3 Squibb's Taxol or Platinol, true wholesale prices 4 are generally 10 to 20 percent below published 5 AWPs." Do you see that? 6 A. Yes, I do. 7 Q. And then in the next sentence it says 8 "But for generic drugs nearly every 9 manufacturer's price was 60 to 85 percent below 10 the published average wholesale price." Do you 11 see that? 12 A. Yes, I do. 13 Q. Do you know if from 1989 through 2004 14 Virginia was aware that for generic drugs most 15 manufacturer prices were 60 to 85 percent below 16 published average wholesale price? 17 MS. OBEREMBT: Objection. 18 MS. KODURU: Objection. 19 A. I do not know that. 20 Q. You don't know either way? 21 A. Virginia, no. 22 Q. You recall from your personal

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1 experience that it was generally known and 2 understood in the industry that there was a 3 larger discount for generic drugs than sole- 4 source drugs, right?	1 we take a break for lunch. 2 MR. TORBORG: Okay. 3 THE VIDEOGRAPHER: Off the record at 4 12:21. 5 (Whereupon, at 12:21 p.m. a lunch 6 recess was taken.)
5 MS. OBEREMBT: Objection. 6 MS. KODURU: Objection. 7 A. In my personal experience, that is 8 correct. 9 Q. If you would go to the next paragraph 10 it says "The pricing unreality is even worse for 11 intravenous nutritionals and solutions, a 12 category dominated by Abbott Laboratories and 13 Baxter International. Catalog wholesale prices 14 for these items are on average 80 to 93 percent 15 below those companies' AWPs." Do you see that?	7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22
16 A. Yes, I do. 17 Q. Mr. Hayashi, did DMAS have an 18 understanding that there was an average 19 difference between average wholesale price and 20 catalog prices of 80 to 93 percent -- 21 MS. OBEREMBT: Objection. 22 Q. I'm sorry. I said that wrong.	
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1 Was DMAS aware that for IV nutritionals 2 and solutions that wholesale prices were on 3 average 80 to 93 percent below Abbott and 4 Baxter's AWPs? 5 MS. OBEREMBT: Objection. 6 MS. KODURU: Objection. 7 A. I don't believe Virginia Medicaid knew 8 that. 9 Q. Do you know either way? 10 A. No. 11 Q. So you said you don't believe they knew 12 it, but you don't know either way? 13 A. No, I do not know. 14 Q. Did you ask Mr. Shepherd about that? 15 A. No, I did not. 16 Q. Did you ask any employees who were at 17 DMAS from 1989 through 2001 about that? 18 A. No, I did not. 19 MR. TORBORG: I'm about ready to go to 20 topic 6. I can keep going. I'm fine. Or I can 21 take a break. So I leave it up to -- 22 MS. OBEREMBT: It's 12:30. Why don't	1 A F T E R N O O N S E S S I O N 2 (1:21 p.m.) 3 4 Whereupon, 5 KEITH T. HAYASHI, 6 the witness testifying at the time of recess, 7 having been previously duly sworn, was further 8 examined and testified as follows. 9 10 EXAMINATION RESUMED BY COUNSEL FOR 11 ABBOTT LABORATORIES 12 BY MR. TORBORG: 13 THE VIDEOGRAPHER: On the record at 14 1:29. 15 Q. Welcome back, Mr. Hayashi. 16 A. Thank you. 17 Q. Let me ask you first, did you have any 18 conversations with counsel over the lunch break 19 relating to your deposition testimony? 20 A. Yes, I did. 21 Q. Okay. What did you talk about? 22 A. We talked about some of my responses